

LEGISLATURE OF THE STATE OF IDAHO
Sixty-first Legislature First Regular Session - 2011

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 94

BY RESOURCES AND CONSERVATION COMMITTEE

AN ACT

RELATING TO INJECTION WELLS; AMENDING THE HEADING FOR CHAPTER 39, TITLE 42, IDAHO CODE, TO DELETE REFERENCE TO WASTE DISPOSAL; AMENDING SECTION 42-3902, IDAHO CODE, TO REVISE DEFINITIONS, TO DEFINE A TERM AND TO DELETE A DEFINITION FOR "WASTE DISPOSAL AND INJECTION WELL"; AMENDING SECTION 42-3903, IDAHO CODE, TO REVISE TERMINOLOGY TO PROVIDE FOR DEEP INJECTION WELLS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 42-3904, IDAHO CODE, TO DELETE AN EXEMPTION FROM NOTICE OF CONSTRUCTION FILING REQUIREMENTS AND FEES FOR CERTAIN NEW SHALLOW INJECTION WELLS AND TO MAKE A TECHNICAL CORRECTION; AND AMENDING SECTIONS 42-3905, 42-3908, 42-3911, 42-3912 AND 42-3913, IDAHO CODE, TO REVISE TERMINOLOGY TO PROVIDE FOR DEEP INJECTION WELLS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That the Heading for Chapter 39, Title 42, Idaho Code, be, and the same is hereby amended to read as follows:

CHAPTER 39

~~WASTE DISPOSAL AND~~ INJECTION WELLS

SECTION 2. That Section 42-3902, Idaho Code, be, and the same is hereby amended to read as follows:

42-3902. DEFINITIONS. Whenever used in this chapter:

(1) "Aquifer" means any geologic formation that will yield water to a well in sufficient quantities to make production of water from the formation feasible for beneficial use, except when the water in such formation results solely from injection through a ~~waste disposal and~~ deep or shallow injection well.

(2) "Deep injection well" means an injection well which is more than eighteen (18) feet in vertical depth below land surface.

(3) "Director" means the director of the department of water resources.

(34) "Drinking water source" means an aquifer which contains water having less than 10,000 mg/l total dissolved solids and has not been exempted from this designation by the director of the department of water resources.

(45) "Fluid" means any material or substance which flows or moves whether in a semisolid, liquid, sludge, gaseous or any other form or state.

(56) "Formation" means a body of consolidated or unconsolidated rock characterized by a degree of lithologic homogeneity which is mappable at the earth's surface or traceable in the subsurface.

(67) "Hazardous waste" means any fluid or combination of fluids, excluding radioactive wastes, which because of quantity, concentration or characteristics (physical, chemical or biological) may:

(a) Cause or significantly contribute to an increase in deaths or an increase in serious, irreversible or incapacitating reversible illness; or

(b) Pose a substantial threat to human health or to the environment if improperly treated, stored, disposed of, or managed. Such wastes include, but are not limited to, materials which are toxic, corrosive, ignitable, or reactive, or materials which may have mutagenic, teratogenic, or carcinogenic properties, but do not include solid or dissolved material in domestic sewage or solid or dissolved material in irrigation return flows.

(78) "Injection" means the subsurface emplacement of fluids through an injection well.

~~(89) "Injection well" means any excavation or artificial opening into the ground which meets the following three (3) criteria feature that is operated to allow injection which also meets at least one (1) of the following criteria:~~

~~(a) It is a bored, drilled or dug hole, or is a driven mine shaft or a driven well point; and A bored, drilled or driven shaft whose depth is greater than the largest surface dimension;~~

~~(b) It is deeper than its largest straight-line surface dimension; and A dug hole whose depth is greater than the largest surface dimension;~~

~~(c) It is used for or intended to be used for injection An improved sink-hole; or~~

~~(d) A subsurface fluid distribution system.~~

~~(910) "Irrigation waste water" means surplus water diverted for irrigation but not applied to crops or runoff of surplus water from the cropland as a result of irrigation excess surface water from agricultural fields generated during any agricultural operation, including runoff of irrigation tailwater, as well as natural drainage resulting from precipitation, snowmelt and floodwaters.~~

~~(101) "Licensed driller" means any person holding a valid license to drill water wells in Idaho as provided and defined in section 42-238, Idaho Code.~~

~~(112) "Operate" means to allow fluids to enter an injection well by action or by inaction of the operator.~~

~~(123) "Operator" means any individual, group of individuals, partnership, company, corporation, municipality, county, state agency, taxing district or federal agency who operates or proposes to operate any injection well.~~

~~(134) "Owner" means any individual, group of individuals, partnership, company, corporation, municipality, county, state agency, taxing district, or federal agency owning land on which any injection well exists or is proposed to be constructed.~~

~~(145) "Radioactive material" means any material, solid, liquid or gas which emits radiation spontaneously.~~

~~(156) "Radioactive waste" means any fluid which contains radioactive material in concentrations which exceed those established for discharges to water by 10 CFR 20.~~

~~(167) "Shallow injection well" means an injection well which is less than or equal to eighteen (18) feet in vertical depth below land surface.~~

1 (178) "Sanitary waste" means any fluid generated through residential
 2 (domestic) activities, such as food preparation, cleaning and personal hy-
 3 giene. The term does not include industrial, municipal, commercial or other
 4 nonresidential process fluids.

5 (189) "Surface runoff water" means runoff water from the natural ground
 6 surface and cropland. Runoff from urbanized areas, such as streets, park-
 7 ing lots, airports, and runoff from animal feedlots, agricultural process-
 8 ing facilities and similar facilities are not included within the scope of
 9 this term.

10 ~~(19) "Waste disposal and injection well" means an injection well which~~
 11 ~~is more than eighteen (18) feet in vertical depth below land surface.~~

12 SECTION 3. That Section 42-3903, Idaho Code, be, and the same is hereby
 13 amended to read as follows:

14 42-3903. ~~WASTE DISPOSAL AND DEEP~~ INJECTION WELLS -- CONSTRUCTION --
 15 MODIFICATION -- USE -- PERMIT REQUIRED. No new ~~waste disposal and deep~~ in-
 16 jection well shall be constructed after the effective date of this act unless
 17 a permit therefor has been issued by the director of the department of water
 18 resources. No ~~waste disposal and deep~~ injection well existing on the effec-
 19 tive date of this act shall be modified after the effective date of this act
 20 unless a permit therefor has been issued by the director. No ~~waste disposal~~
 21 ~~and deep~~ injection well existing on the effective date of this act shall con-
 22 tinue to be used and maintained after January 1, 1974, unless a permit there-
 23 for has been issued by the director.

24 SECTION 4. That Section 42-3904, Idaho Code, be, and the same is hereby
 25 amended to read as follows:

26 42-3904. APPLICATION FOR PERMIT -- OWNER -- OPERATOR RESPONSIBLE --
 27 NOTICE OF CONSTRUCTION FORM. (1) The owner or operator shall make applica-
 28 tion to the director of the department of water resources for a permit as pro-
 29 vided in this chapter. When a facility is owned by one (1) person but oper-
 30 ated by another, it shall be the operator's duty to obtain a permit. Such ap-
 31 plication shall be upon forms furnished by the director which shall require
 32 information concerning the location and description of the injection well,
 33 the quantity, quality, and nature of the material being or proposed to be in-
 34 jected, the description of the underground formation and aquifer into which
 35 the material is proposed to be or is being injected, the availability of al-
 36 ternative sources of disposal, and such other information as will enable the
 37 director to determine the effect of injection upon the quality of the ground
 38 water, the effect upon the beneficial uses of said ground water, the effect
 39 upon the public health and the effect upon public benefits derived there-
 40 from, if any. Such application shall be submitted complete with fees as pro-
 41 vided in this chapter. Mine shafts used for the disposal of wastes resulting
 42 from the mining and concentration process shall be exempt from the permit re-
 43 quirements of this chapter until an inventory and assessment of the contami-
 44 nation potential posed by such operation is completed.

45 (2) Owners of new shallow injection wells drilled after July 1, 1997,
 46 shall submit a notice of construction form to the department of water re-
 47 sources no later than thirty (30) days prior to commencement of construction

1 for each new well. The notice of construction form shall be submitted with
 2 the fee as provided in this chapter on a form provided by the department of
 3 water resources. ~~New shallow injection wells used for disposal of storm wa-~~
 4 ~~ter from building roof drains are exempt from the notice of construction fil-~~
 5 ~~ing requirements and fees of this chapter.~~

6 SECTION 5. That Section 42-3905, Idaho Code, be, and the same is hereby
 7 amended to read as follows:

8 42-3905. FEES -- TRANSMITTED TO STATE TREASURER. (1) Fees provided for
 9 in this section shall accompany all applications and notice of construction
 10 forms. No such application or notice of construction form shall be accepted
 11 unless accompanied by a filing fee as provided in this section. A separate
 12 application shall be filed for each ~~waste disposal and deep~~ injection well
 13 and each shallow injection well for which a permit is required by the rules
 14 adopted by the water resource board. The filing fee for each injection well
 15 requiring a permit shall be one hundred dollars (\$100) payable to the depart-
 16 ment of water resources.

17 (2) The notice of construction form for each new shallow injection well
 18 shall be accompanied by a fee of seventy-five dollars (\$75.00) payable to the
 19 department of water resources.

20 (3) All fees received under the provisions of this chapter are deemed
 21 to be nonrefundable and shall be transmitted to the state treasurer for de-
 22 posit in the water administration fund as established under the provisions
 23 of section 42-238(a), Idaho Code, except that fees submitted with applica-
 24 tions that do not require a permit shall be returned to the applicant. Fees
 25 collected may be used by the director of the department of water resources to
 26 carry out the provisions of this chapter.

27 SECTION 6. That Section 42-3908, Idaho Code, be, and the same is hereby
 28 amended to read as follows:

29 42-3908. PERMIT APPROVING CONSTRUCTION AND USE -- CONDITIONS -- RE-
 30 JECTION OF APPLICATION. If the director of the department of water resources
 31 determines the use of the proposed or existing injection well will not affect
 32 the rights of others to use water for beneficial purposes shall issue a per-
 33 mit approving the construction, modification or continued operation of such
 34 well. Such permit shall contain conditions, if any, determined to be nec-
 35 essary to protect the public interest in the ground water resource includ-
 36 ing, but not limited to, the method and manner of operation of the injection
 37 well, the period during which the injection well may be operated, a date when
 38 such permit shall expire, and periodic reports to the department of water re-
 39 sources of the quality and quantity of the fluids injected. No ~~waste dis-~~
 40 ~~posal and deep~~ injection well or shallow injection well, as may be required
 41 by rules and regulations adopted under this chapter, shall be used unless a
 42 valid permit is in effect in accordance with this chapter.

43 If the director of the department of water resources determines the use
 44 of the proposed or existing injection well will interfere or is interfering
 45 with the right of the public to withdraw water for beneficial uses, and the
 46 director finds there are no overriding needs existing to justify the use of

1 the injection well, the director may reject the application and forward no-
2 tice of such rejection to the owner or operator by certified mail.

3 SECTION 7. That Section 42-3911, Idaho Code, be, and the same is hereby
4 amended to read as follows:

5 42-3911. FAILURE TO OBTAIN REQUIRED PERMIT OR SUBMIT REQUIRED INFOR-
6 MATION -- PENALTY. Any owner or operator who causes to be constructed or con-
7 sents either expressly or impliedly to the construction of a new ~~waste dis-~~
8 ~~posal and deep~~ injection well without having first obtained a permit there-
9 for from the director of the department of water resources as provided in
10 this chapter shall be guilty of a misdemeanor. Any owner or operator who
11 causes an existing ~~waste disposal and deep~~ injection well to be modified or
12 consents either expressly or impliedly to the modification of an existing
13 ~~waste disposal and deep~~ injection well without having first obtained a per-
14 mit therefor from the director of the department of water resources as pro-
15 vided in this chapter shall be guilty of a misdemeanor. From and after Jan-
16 uary 1, 1974, any owner or operator who continues to operate and maintain or
17 consents either expressly or impliedly to the continued operation and main-
18 tenance of an existing ~~waste disposal and deep~~ injection well without having
19 first obtained a permit therefor from the director of the department of water
20 resources as provided in this chapter shall be guilty of a misdemeanor; pro-
21 vided, that no misdemeanor shall occur where an owner or operator applied for
22 a permit before January 1, 1974, and the director of the department of water
23 resources has not approved or rejected said application. Any owner or oper-
24 ator of a proposed or existing injection well who violates the rules and reg-
25 ulations of the water resource board shall be guilty of a misdemeanor. Each
26 and every day that such activity is carried on in violation of this section
27 shall constitute a separate and distinct offense.

28 SECTION 8. That Section 42-3912, Idaho Code, be, and the same is hereby
29 amended to read as follows:

30 42-3912. DRILLERS -- MUST BE LICENSED -- APPROVED PERMITS -- CERTI-
31 FIED COPIES. It shall be unlawful for any person not a licensed driller to
32 construct a new ~~waste disposal and deep~~ injection well or modify an exist-
33 ing ~~waste disposal and deep~~ injection well, except that a driller's license
34 is not required for the construction of a driven mine shaft or dug hole for
35 the purposes of this chapter. All licensed drillers shall obtain a certified
36 copy of the approved permit from the director of the department of water re-
37 sources prior to construction of any new ~~waste disposal and deep~~ injection
38 well or prior to the modification of any existing ~~waste and deep~~ injection
39 well. Failure by a licensed driller to comply with this section shall con-
40 stitute cause for revocation of a well driller's license in accordance with
41 section 42-238, Idaho Code.

42 SECTION 9. That Section 42-3913, Idaho Code, be, and the same is hereby
43 amended to read as follows:

44 42-3913. MINIMUM STANDARDS -- RULES AND REGULATIONS -- ADOPTION. The
45 water resource board shall adopt minimum standards for the construction

1 or abandonment of ~~waste disposal and deep~~ injection wells. Such stan-
2 dards shall require each ~~waste disposal and deep~~ injection well to be so
3 constructed as to protect the ground water of this state from waste and
4 unreasonable contamination. Each licensed well driller or operator will
5 be furnished with a copy of the adopted standards, and will be required to
6 construct each ~~waste disposal and deep~~ injection well drilled after the ef-
7 fective date of said rules and regulations in compliance with the determined
8 standards. Failure by a licensed driller to comply with such standards shall
9 constitute cause for revocation of the well driller's license in accordance
10 with section 42-238, Idaho Code.

11 The water resource board shall also adopt minimum standards for the
12 construction and abandonment of shallow injection wells. Any person who
13 constructs or abandons a shallow injection well without complying with such
14 standards shall be guilty of a misdemeanor.